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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210863
Party	Defendant Thanco Products & Imports, Inc.
Correspondence Address	D PETER HARVEY HARVEY SISKIND LLP 4 EMBARCADERO CENTER, 39TH FLOOR SAN FRANCISCO, CA 94111-4115 UNITED STATES pharvey@harveysiskind.com, ngray@harveysiskind.com, clee@harveysiskind.com
Submission	Reply in Support of Motion
Filer's Name	Naomi Jane Gray
Filer's e-mail	pharvey@harveysiskind.com, ngray@harveysiskind.com, clee@harveysiskind.com, kmcknight@harveysiskind.com
Signature	/Naomi Jane Gray/
Date	08/05/2013
Attachments	Thanco Reply to Opposer's Opposition to Applicant's Motion to Dismiss 130730 (00023290).pdf(250789 bytes )

HARVEY SISKIND LLP  
D. PETER HARVEY (CA SBN 55712)  
pharvey@harveysiskind.com  
NAOMI JANE GRAY (CA SBN 230171)  
ngray@harveysiskind.com  
KATE W. MCKNIGHT (CA SBN 264197)  
kmcknight@harveysiskind.com  
Four Embarcadero Center, 39<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 354-0100  
Facsimile: (415) 391-7124

Attorneys for Applicant,  
Thanco Products & Imports, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CHRIS ECONOMIDES III,  
an individual,

Opposer,

v.

THANCO PRODUCTS & IMPORTS, INC.  
a Texas corporation,

Applicant.

**Opposition No. 91210863**

**APPLICANT’S REPLY IN FURTHER  
SUPPORT OF MOTION TO DISMISS**

The response of Opposer Chris Economides III (“Economides” or “Opposer”) to Applicant Thanco Products & Imports, Inc.’s (“Thanco”) Motion to Dismiss does not establish how Economides has a direct and personal stake in the outcome of this proceeding and a reasonable basis for his belief in damage as it relates to Application Nos. 77378572 and 77369646. Economides’ response also fails to point to any facts which would, if proved, establish that there is a valid ground for opposing Thanco’s applications. Thus, Economides’ Notice of Opposition is deficient and should be dismissed.

1           **A.       Economides Lacks Standing to Oppose Thanco’s Applications**

2           Economides does not dispute that he has alleged no interest Application No. 77378582. Though  
3 Economides alleges that he has a general interest in making and selling clothing, he does not address a  
4 single concern regarding the use of GOT OUZO? in connection with coffee cups, tea cups, and mugs.

5           Moreover, Economides fails to allege a direct and personal stake in the outcome of this  
6 proceeding beyond that of the general public. TBMP §309.03(b); *see also Int’l Order of Job’s*  
7 *Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 1092 (TTAB 1984). Economides acknowledges that a  
8 real interest may be found “where plaintiff pleads (and later proves): Plaintiff has a bona fide intent to  
9 use the same mark for related goods, and is about to file an intent-to-use application to register the mark  
10 ...” (Response to Motion to Dismiss at 3) (emphasis added). Economides’ response does not point to  
11 any allegation or supporting facts that he has a bona fide intent to use the mark GOT OUZO? in  
12 connection with t-shirts, sweat shirts, caps, coffee cups, tea cups, and mugs. Nor does he allege that he  
13 is about to file an intent-to-use application that will be refused because of Thanco’s registration.  
14 Consequently, Economides does not have a real interest in this proceeding. Any other finding “could  
15 lead to the result that a business competitor who used a mark totally different from an applicant’s mark  
16 would be able to harass the applicant simply by searching the register and asserting the ground of  
17 likelihood of confusion based on any marks it happened to find there.” *Holmes Products Corp v.*  
18 *Duracraft Corp.*, 1994 TTAB LEXIS 11, 10 (TTAB 1994).

19           In an effort to cure his pleading deficiencies in this opposition proceeding, Economides seeks to  
20 rely on his supposedly “direct and personal stake” in Cancellation No. 92053525 (the “Kontos  
21 Cancellation”). In the Kontos Cancellation, an entity called Apollo Graphics and Marketing (“AGM”)  
22 petitioned to cancel Registration No. 3246800, owned by George Kontos, in class 25 for various  
23 clothing items. AGM alleged a generalized interest in providing t-shirts to Greek churches, but did not  
24 allege that it was using or had a bona fide intent to use GOT OUZO? The Kontos Cancellation was a  
25 different proceeding between different parties involving a different registration for different goods than  
26  
27  
28

1 those at issue here.<sup>1</sup> It cannot serve as the basis for Economides, an individual, to assert standing in this  
2 opposition proceeding. Economides “should not be heard on a third party’s rights.” See *Jewelers*  
3 *Vigilance Committee, Inc. v. Ullenberg Corp.*, 853 F.2d 888, 892 (Fed. Cir. 1988).

4 Nor can the Kontos Cancellation substitute for a properly alleged belief of damage. The “belief  
5 of damage” required by the Lanham Act “is more than a subjective belief;” the belief “must have a  
6 ‘reasonable basis in fact.’” *Ritchie v. Simpson*, 170 F.3d 1092, 1098 (Fed. Cir. 1999) (citing *Universal*  
7 *Oil Prod. Co. v. Rexall Drug & Chem. Co.*, 463 F.2d 1122, 1124 (CCPA 1972)). Economides cannot  
8 have a reasonable belief that he will be damaged based on unrelated allegations made by a different  
9 entity in a petition to cancel a different mark for different goods.

10 Finally, Economides attempts to assert a belief of damage due to a letter sent by Thanco.  
11 Economides made no allegations regarding this letter, and did not attach a copy, in his Notice of  
12 Opposition. He has thus not shown how the letter supports a belief of damage. In any event, as the  
13 letter and its contents are not in the pleadings, it cannot be considered on a motion to dismiss. TBMP  
14 §503.02. Moreover, “[i]f opposer’s only claim to ‘damage’ from a potential registration consists of the  
15 fact that applicant has threatened to, or has in fact, filed an infringement suit against opposer, this has  
16 not been regarded as sufficient ‘damage’ to give standing to oppose registration of a mark.” J. Thomas  
17 McCarthy, *McCarthy on Trademarks and Unfair Competition*, §20:12 (4<sup>th</sup> ed. 2013); see also *Morton*  
18 *Foods, Inc. v. The Frito Co.*, 314 F.2d 822, 823-24 (CCPA 1963) (holding that “[m]erely because  
19 applicant in the pending infringement action seeks an adjudication as to the legal rights of the parties in  
20 connection with the marks there involved, it cannot be said that such advantages as may be gained by  
21 applicant from the granting of a registration here will constitute ‘damage’ to the opposer in the sense of  
22 Section 13 of the Lanham Act.”). Without a real interest in the current proceeding and a reasonable  
23 basis for his belief of damage, there is no controversy between the parties and Economides is a mere  
24 intermeddler.

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27 <sup>1</sup> The Kontos Cancellation resulted in the cancellation of Registration Number 3246800 following a  
28 successful infringement action by Thanco against George Kontos. *Thanco Prods. & Imports, Inc. v.*  
*Kontos*, Cancellation No. 92048746 (May 5, 2011) [Doc. #10].

1           **B.       The Opposition Fails to State a Claim for Relief under Rule 12(b)(6) of the Federal**  
2           **Rules of Civil Procedure.**

3           Economides concedes that “[opposer] must also allege facts which would, if proved, establish  
4           that there is a valid ground for opposing [applicant’s] applications.” Economides has not, however,  
5           alleged any facts whatsoever in support of his asserted grounds. *Young v. AGB Corp.*, 152 F.3d 1377,  
6           1380 (Fed. Cir. 1998). “Although the content of the ESTTA cover sheet is read in conjunction with the  
7           Notice of Opposition as an integral component, ... the mere mention of a ground therein is insufficient.”  
8           *Embarcadero Technologies, Inc. v. RStudio, Inc.*, 2013 TTAB LEXIS 6, 3 (TTAB 2013). Economides’  
9           Notice of Opposition is simply a “threadbare recital [] of a cause of action’s elements, supported by  
10          mere conclusory statements,” that does not adequately state a single claim to relief that is plausible on  
11          its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). Economides cannot merely select grounds for  
12          cancellation from a laundry list on the ESTTA filing form and hope to survive a motion to dismiss.  
13          Therefore, Economides’ Notice of Opposition should be dismissed in its entirety for failure to state a  
14          single claim upon which relief may be granted.

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1 **CONCLUSION**

2 For the reasons set forth above, the Notice of Opposition is fundamentally legally deficient and  
3 accordingly fails to state a claim on which relief may be granted because (1) Opposer lacks standing to  
4 maintain this proceeding and (2) Opposer fails to plead any valid grounds for opposition and allege  
5 sufficient facts in support thereof. For all of the reasons set forth above, the Notice of Opposition  
6 should be dismissed.

7  
8 Dated: August 5, 2013

Respectfully submitted,

9 HARVEY SISKIND LLP

10 /Naomi Jane Gray/

11 By: Naomi Jane Gray

12 Four Embarcadero Center, 39<sup>th</sup> Floor  
13 San Francisco, CA 94111  
14 Telephone: (415) 354-0100  
Facsimile: (415) 391-7124

15 Attorneys for Applicant,  
16 Thanco Products & Imports, Inc.

**CERTIFICATE OF TRANSMISSION**

I hereby certify that a true and correct copy of the attached APPLICANT'S REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS (Opposition No. 91210863) is being electronically transmitted to the Trademark Trial and Appeal Board on August 5, 2013.

/Naomi Jane Gray/  
Naomi Jane Gray

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Chris Economides III  
3953 Avera Avenue  
Winston-Salem, NC 27106

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Cynthia Lee